

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

SHERRIE MURPHY,

Charging Party,

-v-

MONTANA HIGHWAY PATROL,

Respondent.

Case # 0089012788

ORDER

Sherrie Murphy (Murphy) filed a complaint with the Department of Labor and Industry, Human Rights Bureau (Bureau) alleging that the Montana Highway Patrol (MHP) discriminated against her on the basis of her gender. Following an informal investigation, the Department determined that Murphy's allegations of unlawful discrimination were not timely filed. Therefore, the Bureau did not address the merits of Murphy's claims. The Department issued a Notice of Dismissal. Murphy filed an objection with the Montana Human Rights Commission (Commission). During the pending appeal to the Commission, the Bureau notified the parties that it had misplaced a portion of the documents submitted by Murphy during the informal investigation. These documents alleged facts which could show Murphy was subjected to a hostile work environment during a time period that was within the statutory requirements to file a complaint. The Bureau indicated it did not address these facts in making its decision to dismiss the complaint for failure to timely file.

The Commission considered the matter on September 17, 2008. Jim Reynolds appeared and argued on behalf of Murphy. Katherine Orr appeared and argued on behalf of MHP.

Murphy asserted that her complaint was timely filed because it was filed within 300 days of when MHP's statutory grievance process was properly begun. Murphy also

asserted that because she stated in her complaint that “the behaviors of the MHP in targeting, criticizing, and disciplining charging party is part of a practice and pattern of discriminatory behavior,” the Bureau erred in failing to analyze her complaint as a timely hostile work environment claim.

MHP asserted the investigator was correct in dismissing the complaint because Murphy failed to file her complaint within 300 days of when she was first told she would be demoted from sergeant to trooper. MHP also asserted that Murphy’s complaint did not allege a hostile work environment claim in her position as a trooper rather than a sergeant and therefore, the Bureau’s dismissal was correct.

The Commission reviews a decision of the Bureau to dismiss a complaint using an abuse of discretion standard. Section § 49-2-511(2)(a), MCA. After careful consideration, the Commission concludes the determination of the Bureau to dismiss the complaint in this case is an abuse of discretion. Regarding the first argument, the Commission concludes that Murphy’s complaint was not timely filed to assert discrimination based on only her demotion because she was required to file with the Bureau within 300 days of when the discriminatory practice “occurred or was discovered.” Therefore, the investigator did not err in failing to analyze whether Murphy’s demotion was a stand-alone discriminatory adverse action.

However, regarding the second argument, the Commission further concludes that because the complaint alleged a practice and pattern of discrimination based on gender, because Murphy submitted alleged facts during the investigation that could constitute timely filed allegations, and because the Bureau investigator did not analyze the merits of those facts to determine if the preponderance of the evidence showed a discriminatory hostile work environment, the investigator abused her discretion in dismissing Murphy’s case. Therefore, the Commission sustains the objection and the

case is hereby remanded for hearing to the Hearings Bureau pursuant to § 49-2-511(2)(c), ARM 24.9.1714(4), and § 49-2-505, MCA.

IT IS HEREBY ORDERED, that Sherrie Murphy's objection is **sustained**. The Commission reopens and remands the case to the Hearings Bureau for hearing.

DATED this ____ day of September, 2008.

Chair Ryan C. Rusche
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this _____ day of September, 2008.

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